

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Ricardo Cooper,

Plaintiff, Case No. 13-cv-14246
v. Hon. Judith E. Levy
 Mag. Judge Elizabeth A. Stafford

Frank Szostak and Mike Krafft,

Defendants.

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**OPINION & ORDER ADOPTING [39] REPORT &
RECOMMENDATION AND GRANTING IN PART AND DENYING
IN PART DEFENDANTS' [35] MOTION FOR SUMMARY
JUDGMENT**

Plaintiff Ricardo Cooper is a prisoner in the Saginaw Regional Correctional Facility (SRF) in Freeland, Michigan. On October 4, 2013, he filed this *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983, alleging retaliation in violation of his First Amendment rights, violation of his Eighth Amendment right to be free from cruel and unusual punishment, and violation of his Fourteenth Amendment due process and equal protection rights. Of the original defendants in this case, only Frank Szostak, food service director at SRF, and Mike Krafft, a

food service supervisor at SRF, remain. Cooper alleges Szostak and Krafft violated his First and Fourteenth Amendment rights by removing Cooper from his food service job in retaliation for expressing public concern about and grieving food sanitation conditions at SRF. Cooper further alleges Szostak violated his Eighth Amendment rights by continuing to allow unsanitary food handling practices. Cooper sues Szostak and Krafft in both their individual and official capacities.

This matter is before the Court on Magistrate Judge Stafford's February 3, 2015 Report and Recommendation (Dkt. 39.) The Magistrate Judge recommends granting in part and denying in part defendants' motion for summary judgment (Dkt. 35). Specifically, the Magistrate Judge recommends granting defendants' motion as to Cooper's First Amendment retaliation and Fourteenth Amendment due process claims, dismissing *sua sponte* Cooper's Fourteenth Amendment equal protection claims, and denying defendants' motion as to Cooper's Eighth Amendment claim against Szostak.

No party has filed objections to the Report and Recommendation, and the time for doing so has expired. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). The failure to object to the Report and

Recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). The failure to object also relieves this Court from its duty to review this matter independently. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The Court has nonetheless thoroughly reviewed the Report and Recommendation, defendants' motion for summary judgment, Cooper's response, and the record as a whole, and agrees with the findings and conclusions of the magistrate judge.

Accordingly, the Magistrate Judge's Report & Recommendation is ADOPTED;

Defendants' motion for summary judgment is GRANTED as to Cooper's First and Fourteenth Amendment claims; and

Defendants' motion for summary judgment is DENIED as to Cooper's Eighth Amendment claim against Szostak.

IT IS SO ORDERED.

Dated: February 23, 2015
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF

System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on February 23, 2015.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager